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In the Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, ET AL.,

Petitioners,

v.

CENDANT MORTGAGE CORPORATION, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE AMERICAN RED CROSS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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BRIEF OF THE AMERICAN RED CROSS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

INTEREST OF THE *AMICUS CURIAE*

The American Red Cross ("Red Cross") is a humanitarian organization that prevents and alleviates human suffering in the face of emergencies.[1]

Founded in 1881, the Red Cross received a congressional charter in 1900; as amended, the charter specifies that the Red Cross is both a "Federally chartered instrumentality of the United States" and a charitable corporation that provides humanitarian services. See 36 U.S.C. § 300101(a).

The organization performs a number of vital functions:

Fulfilling U.S. Treaty Obligations. As a party to the Geneva Conventions, the United States is obligated to provide for the well-being of wounded and sick individuals in areas of conflict. The Conventions permit signatories to designate "National Red Cross Societies" to satisfy these obligations.[2] The Red Cross is the National Red Cross Society officially recognized by the United States, charged with "per-

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

[2] See, *e.g.*, (Geneva) Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 26, Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31.

form[ing] all the duties devolved on a national society" under the Conventions. 36 U.S.C. § 300102(2).

Service to the Military. In partnership with the federal government, the Red Cross provides services to members of the Armed Forces of the United States and to their families. The Red Cross provides financial assistance, facilitates emergency communications, supports veterans, and teaches coping skills to military families. In fiscal year 2015, the organization provided more than 367,000 emergency assistance services to servicemembers and their families. Am. Red Cross, *2015 Annual Report*, at 16 (2016).[3]

Disaster Relief. The Red Cross responds to more than 65,000 disasters every year—or one every eight minutes—ranging from individual house fires to large-scale events. Working through its disaster relief personnel, more than 95% of whom are volunteers, the organization provides shelter, food and water, and other supplies and services to those displaced or otherwise affected by disasters. Am. Red Cross, *Disaster Relief*.[4] The Red Cross also works with the global Red Cross and Red Crescent network to prepare for and respond to disasters in the world's most vulnerable communities. See Am. Red Cross, *2015 Annual Report*, *supra*, at 6–9.

Blood Services. The Red Cross is the Nation's largest provider of blood services, accounting for approximately 40% of the country's blood supply. The organization collects and distributes more than 5

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[3] http://www.redcross.org/images/MEDIA_CustomProductCatalog/m57440149_Annual-Report-2015.pdf.

[4] http://www.redcross.org/about-us/our-work/disaster-relief.

million blood donations every year from more than 3 million donors. Am. Red Cross, *Lifesaving Blood*.[5]

Training and Certification. The Red Cross offers a variety of training courses in which individuals can acquire skills in first aid, CPR, automated external defibrillator use, lifeguarding, babysitting, and caregiving. It also works with employers and organizations to offer training for employees in first aid. Am. Red Cross, *Health and Safety Training & Education*.[6] These courses taught skills to more than 4 million people in fiscal year 2015 alone. Am. Red Cross, 2015 Annual Report, *supra*, at 12.

* * *

This brief is limited to the second question presented by the petition for certiorari, *i.e.*, whether this Court's decision in *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), should be overruled. Pet. for Cert. i. That decision interpreted specific language in the Red Cross's congressional charter. Thus, any suggestion that the decision be overturned is of paramount interest to the Red Cross.

The Red Cross takes no position on how this Court should interpret specific language in the charter of respondent Federal National Mortgage Administration ("Fannie Mae"). Fannie Mae's charter contains different language that was adopted in a different historical and legal context.

SUMMARY OF ARGUMENT

In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), this Court held that specific language

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[5] http://www.redcross.org/what-we-do/blood-donation.

[6] http://www.redcross.org/what-we-do/-education.

within the sue-and-be-sued provision of the congressional charter of the Red Cross conferred original federal jurisdiction over suits involving the organization. That decision was a matter of statutory interpretation.

In the event that this Court determines that the interpretation of Fannie Mae's sue-and-be-sued clause is dictated by this Court's decision in *Red Cross* v. *S.G.*—despite differences between the language in the corporations' charters and histories—petitioners have asked this Court to revisit its ruling in *Red Cross* v. *S.G.* The Court should decline petitioners' request to revisit that ruling. There is no warrant for reconsidering *Red Cross*, as stare decisis strongly counsels against disturbing settled law.

When this Court interprets a statute, the doctrine of stare decisis has special force. And when Congress has revisited the statute in question after this Court's interpretation and has left the relevant language in place, the considerations of stare decisis are particularly compelling.

Such is the case here. In 2007, Congress revised the Red Cross's charter. But it left the sue-and-be-sued provision intact and expressly found that none of the "rights and obligations" of the Red Cross were being changed. That amendment to the Red Cross's charter shows that Congress has acquiesced in the result in *Red Cross* v. *S.G.* A dispute about the interpretation of another corporation's charter does not justify a departure from this Court's strong rule against statutory reinterpretation.

Moreover, this Court's decision in *Red Cross* v. *S.G.* was correct. In *Red Cross* v. *S.G.*, this Court held that, when Congress drafted the sue-and-be-

sued clause in the charter of the Red Cross, it did so against the backdrop of precedents defining the particular language that Congress employed. Because this Court had interpreted that language before Congress inserted it into the Red Cross's charter, the only reasonable conclusion was that Congress intended the language to mean exactly what this Court had already found that language to mean.

The Red Cross has no stake in Fannie Mae's charter and does not opine on how Fannie Mae's charter should be interpreted. But it should be beyond dispute that the reasoning of *Red Cross* v. *S.G.* remains sound as applied to the charter of the Red Cross, which used a linguistic formulation with an established meaning as determined by this Court's previous opinions.

ARGUMENT

In a three-paragraph aside near the end of their lengthy brief, petitioners argue that, if *Red Cross* would control the interpretation of Fannie Mae's charter, then *Red Cross* v. *S.G.* should be overruled.

This Court need not reach petitioners' argument. If the Court accepts petitioners' arguments that *Red Cross* v. *S.G.* is distinguishable because Fannie Mae's charter contains different language with a different historical pedigree, then there will be no need to reassess the Red Cross's charter. The Red Cross has no interest in the interpretation of Fannie Mae's charter and takes no position on that question.

If, however, the Court determines that *Red Cross* v. *S.G.* governs, it should reject petitioners' invitation to revisit *Red Cross* v. *S.G.* Standard principles of statutory stare decisis counsel strongly against reopening settled questions of statutory interpretation,

such as this Court's 1992 interpretation of language added to the Red Cross's charter in 1947. The stare decisis considerations here are particularly compelling because Congress has acquiesced in this Court's decision, both by the passage of 24 years' time and by leaving the sue-and-be-sued provision intact when amending the Red Cross's charter. Moreover, the decision in *Red Cross* v. *S.G.* remains correct.

A. *Red Cross* v. *S.G.* Should Be Upheld As A Matter Of Statutory Stare Decisis.

Petitioners have asked this Court to reconsider its decision in *Red Cross* v. *S.G.* But the doctrine of stare decisis impels this Court to honor its precedent.

1. Stare decisis is "a foundation stone of the rule of law." *Michigan* v. *Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). This Court follows precedents because doing so "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991).

"[S]tare decisis carries enhanced force when a decision * * * interprets a statute." *Kimble* v. *Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015). "A difference of opinion within the Court * * * does not keep the door open for another try at statutory construction" because "Congress remains free to alter what [this Court] ha[s] done." *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172–73 (1989). Thus, statutory stare decisis implicates "institutional concerns about the relationship of the Judiciary to Congress." *Neal* v. *United States*, 516 U.S. 284, 295 (1996).

What is more, Congress's acquiescence in this Court's interpretation of a statute "'enhance[s] even the usual precedential force'" accorded to matters of statutory interpretation. *Watson* v. *United States*, 552 U.S. 74, 82–83 (2007) (quoting *Shepard* v. *United States*, 544 U.S. 13, 23 (2005)). Congress can acquiesce in one of two ways—by leaving the interpreted provision "undisturbed" when it "specifically addresse[s]" or "reexamine[s]" the area of law (*Square D Co.* v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 420 (1986)), or by the sheer passage of time (see *Watson*, 552 U.S. at 82 (relying on passage of 14 years)).

2. Applied here, the considerations of stare decisis are particularly forceful. In *Red Cross* v. *S.G.*, this Court interpreted a statute: the Red Cross's charter as amended in 1947. 505 U.S. at 265–66; see Act of May 8, 1947, § 3, ch. 50, 61 Stat. 80, 81 (codified as amended at 36 U.S.C. § 300105). Nearly a quarter of a century has passed since this Court's decision.

Moreover, Congress recently revisited the Red Cross's charter and left the relevant language intact. In 2007, Congress enacted the American National Red Cross Governance Modernization Act, making what it described as the first "[s]ubstantive changes to the Congressional Charter * * * since 1947." Pub. L. No. 110–26, § 2(a)(1), 121 Stat. 103, 103.

In revisiting the charter, Congress overhauled the governance structure of the Red Cross. But it did not amend the sue-and-be-sued provision. In statutory findings, Congress acknowledged that "[t]he United States Supreme Court held The American National Red Cross to be an instrumentality of the United States" and found that "it is in the national

interest that the Congressional Charter confirm that status and that any changes to the Congressional Charter do not affect the rights and obligations of The American National Red Cross to carry out its purposes." *Id.* § 2(a)(7), 121 Stat. at 104–05; see *Dep't of Empl.* v. *United States*, 385 U.S. 355 (1966).

This Court "assume[s] that Congress is aware of existing law when it passes legislation." *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Here, that assumption should carry great weight, as Congress specified its intent not to alter the "rights and obligations" of the Red Cross.

3. Finally, the narrow exceptions to statutory stare decisis are not applicable. When this Court does "reverse [its] statutory interpretations, [it] most often point[s] to subsequent legal developments * * * that have removed the basis for a decision." *Kimble*, 135 S. Ct. at 2410. Or sometimes the Court will revisit a precedent it has found to be unworkable. See, *e.g.*, *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 173 (1989).

There have been no "subsequent legal developments" affecting the Red Cross's sue-and-be-sued clause, other than Congress's implicit ratification of this Court's interpretation in 2007. And nothing about the decision in *Red Cross* v. *S.G.* is unworkable. As applied to the Red Cross, "[t]he decision is simplicity itself to apply" (*Kimble*, 135 S. Ct. at 2411), insofar as it establishes federal court jurisdiction over all cases involving the Red Cross.[7]

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[7] Citing *Alleyne* v. *United States*, 133 S. Ct. 2151 (2013), petitioners contend that the force of stare decisis is reduced because *Red Cross* v. *S.G.* does not "govern primary conduct." Pet. Br. 52 (quoting *Alleyne*, 133 S. Ct. at 2164 (Sotomayor, J., concur-

B. *Red Cross* v. *S.G.* Was Correctly Decided.

In any event, this Court's decision in *Red Cross* v. *S.G.* faithfully and correctly applied its precedents in interpreting the specific language of the sue-and-be-sued clause of the Red Cross charter.

As it explained at the time, this Court did not write on "a clean slate." *Red Cross* v. *S.G.*, 505 U.S. at 252. Rather, in a line of precedents tracing back to 1809, this Court has held that Congress intends to confer federal jurisdiction when it authorizes a federally chartered corporation to sue or be sued in the courts of the United States.

The first relevant decision interpreted the charter of the first Bank of the United States. In an opinion by Chief Justice Marshall, the Court held that the Bank's charter did *not* confer federal jurisdiction when it authorized the bank "'to sue' 'in courts of record, or any other place whatsoever.'" *Bank of the United States* v. *Devaux*, 9 U.S. (5 Cranch) 61, 71 (1809). The Court contrasted the language in the Bank's charter with that of a statute allowing for suits against the Bank's officers "in any court of record of the United States, or of [*sic*] either of them," and reasoned that the disparity between the two provisions "evince[d] the opinion of [C]ongress, that the right to sue does not imply a right to sue in the

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ring)). But the concurring opinion that they cite concerned the interpretation of the *Sixth Amendment*, not a statute. And as applied to the Red Cross, the question whether the language confers federal jurisdiction is not a trivial question of procedure; it implicates the jurisdiction of the federal courts. Moreover, in *Alleyne*, the Court relied on the fact that Sixth Amendment doctrine had changed markedly in light of *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000). No similar legal development exists here.

courts of the union, unless it be expressed" in some other statute. *Id.* at 86.

Fifteen years later, the Court interpreted the charter of the second Bank of the United States to create federal jurisdiction. See *Osborn* v. *Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824). The second Bank's charter permitted the Bank to sue and be sued in "all state courts having competent jurisdiction, and in any circuit court of the United States." The Court held that, by permitting the Bank to sue and be sued "in any circuit court of the United States," the grant of federal jurisdiction "could not be plainer." *Id.* at 817

Next, in *Bankers' Trust Co.* v. *Texas & Pacific Ry. Co.*, 241 U.S. 295 (1916), the Court held that a charter providing that the railroad could "'sue and be sued * * * in all courts of law and equity within the United States'" did not confer federal jurisdiction, given that this language did not specifically reference federal courts and therefore "ha[d] the same generality and natural import" as the language at issue in *Devaux. Bankers Trust*, 241 U.S. at 302–04.

Finally, in *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942), the Court noted that the FDIC's charter created original federal jurisdiction in FDIC cases. The charter authorized the FDIC "to sue or be sued 'in any court of law or equity, State or Federal.'" *Id.* at 455, 467–68.

Congress amended the Red Cross's sue-and-be-sued clause in 1947, parroting the language found to confer jurisdiction in *D'Oench* by providing that the Red Cross could "sue and be sued in courts of law and equity, State or Federal." Act of May 8, 1947, § 3,

ch. 50, 61 Stat. 80, 81 (codified as amended at 36 U.S.C. § 300105).

In *Red Cross* v. *S.G.*, this Court found that the Red Cross's charter confers federal jurisdiction. The Court credited the lineage of sue-and-be-sued cases and emphasized that, by language materially identical to the provision that the Court had recently interpreted in *D'Oench*, Congress intended the same result as in *D'Oench*—to "confer federal jurisdiction." 505 U.S. at 257. That reasoning is beyond reasonable dispute.

In inviting this Court to overrule *Red Cross* v. *S.G.*, petitioners do not address *any* of the statutory history and do not provide any compelling rationale for a completely new interpretation of the Red Cross's charter. Pet. Br. 51–52. Petitioners plainly have provided no sound reason for altering the interpretation of the statute interpreted in *Red Cross* v. *S.G.*[8]

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[8] To the extent petitioners also invite this Court to overrule precedents that Congress has the Article III power to confer federal jurisdiction over federally chartered corporations (Pet. Br. 52–60), that question was settled long ago in *Osborn*, 22 U.S. (9 Wheat.) at 823, 825, and reaffirmed on multiple occasions since, see *Red Cross v. S.G.*, 505 U.S. at 264 (collecting cases). As this Court held in *Red Cross v. S.G.*, it would be inappropriate "to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely" (*ibid.*), especially given that Article III "arising under" jurisdiction is broader than 28 U.S.C. § 1331 (*Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 492, 497 (1983)), and a federally chartered corporation "has no powers and can incur no obligations except as authorized by federal law" (*Puerto Rico* v. *Russell & Co.*, 288 U.S. 476, 485 (1933)).

CONCLUSION

However this Court rules on the judgment, it should leave its interpretation of the Red Cross's sue-and-be-sued clause undisturbed.

Respectfully submitted.

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